

Montana Water Court  
PO Box 1389  
Bozeman, MT 59711-1389  
1-800-624-3270  
(406) 586-4364  
watercourt@mt.gov

**FILED**  
04/26/2023  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
42A-0019-I-2023  
Lambert, Kathryn  
4.00

IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION ROSEBUD CREEK - BASIN 42A  
INTERLOCUTORY DECREE

\* \* \* \* \*

CLAIMANTS: Alden L. Ashley; Carol L. Ashley; Lanell Ashley;  
Wesley L. Ashley; Lesli Mae A. Cottom; Red  
Canyon Ranch Inc.

**CASE 42A-0019-I-2023**  
42A 30143628

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

This claim appeared in the Preliminary Decree with the following remarks:

THE CLAIMED PLACE OF USE COULD NOT BE IDENTIFIED FROM DATA SUBMITTED WITH THE CLAIM.

THE POINT OF DIVERSION LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.

These issue remarks were not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimants an opportunity to file additional information or evidence. On April 10, 2023 the claimants filed their Response To Order Setting Filing Deadline. The Response is viewable in the Court's FullCourt Enterprise case management system.

#### APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

#### FINDINGS OF FACT

1. The Preliminary Decree states that the point of diversion and place of use legal description is the NWNE section 13, T5N, R41E, ROSEBUD. The legal description for each should be N2NWNE section 13, T5N, R41E, ROSEBUD. The issue remarks should be removed as addressed and resolved.

2. The Preliminary Decree also included the following notice remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 42A DECREE ISSUED 05/23/2013.

This remark should be removed as having served its notice purpose.

### CONCLUSION OF LAW

The information provided by the claimants is sufficient to resolve the issue remarks without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

### RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

### **ELECTRONICALLY SIGNED AND DATED BELOW**

#### *Service Via Electronic Mail:*

Jack G. Connors  
Doney Crowley P.C.  
PO Box 1185  
Helena, MT 59624  
(406) 443-2211  
legalsec@doneylaw.com  
jconnors@doneylaw.com

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**ROSEBUD CREEK**  
**BASIN 42A**

**Water Right Number:** 42A 30143628 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:**

RED CANYON RANCH INC  
622 ROSEBUD CREEK RD  
FORSYTH, MT 59327 9516

WESLEY L ASHLEY  
622 ROSEBUD CREEK RD  
FORSYTH, MT 59327 9516

ALDEN L ASHLEY  
622 ROSEBUD CREEK RD  
FORSYTH, MT 59327 9516

CAROL L ASHLEY  
622 ROSEBUD CREEK RD  
FORSYTH, MT 59327 9516

LANELL ASHLEY  
622 ROSEBUD CREEK RD  
FORSYTH, MT 59327 9516

LESLI MAE A COTTOM  
622 ROSEBUD CREEK RD  
FORSYTH, MT 59327 9516

**Priority Date:** FEBRUARY 18, 1943

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**\*Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**\*Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**\*Source Name:** SPRING, UNNAMED TRIBUTARY OF ROSEBUD CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		N2NWNE	13	5N	41E	ROSEBUD

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			N2NWNE	13	5N	41E	ROSEBUD